

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24639  
Docket Number MW-24892

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way *Employees*

PARTIES TO DISPUTE:

(Southern Pacific Transportation Company  
(Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator C. J. Williams for alleged insubordination on December 17, 1981 was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File MW-82-33/338-14-A).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired. his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, who had been in the service of the Carrier almost five years, was formally dismissed on December 22, 1981, for alleged insubordination in connection with the changing of brushes on a ballast regulator on December 17, 1981. On December 29, 1981, Claimant requested a hearing in accordance with the discipline rule of the applicable agreement. The hearing **was** conducted on January 19, 1982, and a copy of the transcript has been made a part of the record.

A review of the record indicates that issues and defenses have been raised before the Board which were not raised in the on-property handling. It is so well settled as to require no citation that issues and defenses not raised in the on-property handling may not be raised for the first time before the Board. We do note, however, that in response by Carrier's highest appeals officer to the General Chairman, he did mention prior discipline assessed Claimant. Therefore, we consider Carrier's introduction of Claimant's prior record in its submission to the Board to be proper.

After carefully reviewing the entire record properly before the Board, including the transcript of the hearing conducted on January 19, 1982, the Board is of the considered opinion that discipline against the Claimant was warranted, but that permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

**That** the parties waived oral hearing;

**That** the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employe** within the meaning of the Railway Labor Act, **as** approved June 21, 1934;

**That** this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

**That** the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984

